



275683

1 COURT OF COMMON PLEAS

2 BUTLER COUNTY, OHIO

3 CASE NO. CV90-01-0055

4
5
6
7
8 STATE OF OHIO,
9 ex rel., LEE FISHER,
ATTORNEY GENERAL OF OHIO,

-vs-

ELSA SKINNER MORGAN,
d/b/a SKINNER
LANDFILL,

10 Plaintiff,

Defendant.

11
12
13
14 Deposition of RODNEY GLENN GIBBONS, a witness

15 herein, taken by the Plaintiff as upon cross-examination and
16 pursuant to the Ohio Rules of Civil Procedure and agreement of
17 counsel as to time and place and stipulations hereinafter set
18 forth, at the offices of James J. Chalfie Co., L.P.A., on
19 Wednesday, March 13, 1991, at 2:13 p.m., before
20 Peggy J. Clark Boggs, a Notary Public within and for the State
21 of Ohio.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

Witness:

Rodney Glenn Gibbons

Cross-Examination by:

Page:

Cheryl Roberto, Esq.

4, 17, 19 & 20

Timothy R. Evans, Esq.

16, 19 & 20

Plaintiff's Exhibits:

Page Marked:

No. 1

11

No. 2

18

- - -

1 APPEARANCES:

2 For the Plaintiff:

3 Cheryl Roberto, Esq.
4 Assistant Attorney General
5 Environmental Enforcement Section
6 State Office Tower
7 30 East Broad Street
8 Twenty-fifth Floor
9 Columbus, Ohio 43266-0410

7 For the Defendant:

8 Timothy R. Evans, Esq.
9 of
10 Holbrock & Jonson
11 315 South Monument Avenue
12 Hamilton, Ohio 45011

11 For Rodney Glenn Gibbons:

12 James J. Chalfie, Esq.
13 of
14 James J. Chalfie Co., L.P.A.
15 1600 Society Bank Center
16 36 East Seventh Street
17 Cincinnati, Ohio 45202

15 Also Present:

16 Mr. Daniel L. Campbell

17 - - -

18

19

20

21

22

23

24

25

S T I P U L A T I O N S

It is stipulated by and between counsel for the respective parties that the deposition of RODNEY GLENN GIBBONS, a witness herein, called as upon cross-examination by the Plaintiff, may be taken at this time and place pursuant to the Ohio Rules of Civil Procedure and agreement of counsel as to time and place of taking said deposition; that the deposition was recorded in stenotypy by the court reporter, Peggy J. Clark Boggs, and transcribed out of the presence of the witness; and that said deposition is to be submitted to the witness for his examination and signature, and that signature may be affixed out of the presence of the Notary Public.

- - -

1 RODNEY GLENN GIBBONS,
2 of lawful age, a witness herein, being first duly sworn as
3 hereinafter certified, was examined and deposed as follows:

4 CROSS-EXAMINATION

5 BY MS. ROBERTO:

6 Q Would you state your full name for the
7 record, please?

8 A Rodney Glenn Gibbons.

9 Q And what is your current address?

10 A 1478 Fitzpatrick Street.

11 Q Is that in Cincinnati?

12 A Cincinnati.

13 Q And would you please state the name of your
14 company and your current title?

15 A The Whitton Trucking Company, and I am the
16 General Manager, for lack of a better word.

17 Q How long have you been General Manager?

18 A Oh, man, I'll say the last ten years.

19 Q OK. What is it that a General Manager does
20 at Whitton Trucking?

21 A Well, I handle all the dispatching and the
22 day-to-day decisions insofar as running the business.

23 Q What does Whitton Trucking do?

24 A We are in the dumpster business, rubbish
25 removal business; that is what it says in the phone book.

1 MS. ROBERTO: OK. Off the record for a
2 second.

3 MR. CHALFIE: Could you (indicating court
4 reporter) read back the last question and answer?

5 (The testimony, beginning on
6 Page 4, Line 23 through Line 25,
7 was read back by the court
reporter.)

8 A (Continued) That is what it is supposed to
9 be. That is the heading we use in the phone book, the Yellow
10 Pages.

11 Q And where do you pick up the rubbish that
12 you remove?

13 A Various construction sites, and you're
14 sitting in one of them here. When they built this building we
15 hauled many loads out of here.

16 Q When you say rubbish, are you talking about
17 household garbage along residential routes?

18 A No, it is strictly construction debris.

19 Q How many trucks does Whitton have?

20 A On a daily basis we operate seven to eight
21 depending on the workload.

22 Q Do you have as many drivers?

23 A Yes.

24 Q As a Chief Dispatching Officer for
25 Whitton Trucking do you assign your truck drivers to their job

1 on a daily basis or how does that work?

2 A It is on a daily basis because all of
3 our -- Given the fact that we deal with construction companies,
4 all of our routes are irregular. As the loads are called in,
5 they are distributed on an as-is basis. We use this radio
6 (indicating) and call it out to the driver depending on which
7 area they are in.

8 Q When a driver gets an assignment it can
9 come over the radio?

10 A When I give the assignment, yes. If it
11 comes in late in the day for a next-day pickup, on the Route
12 Sheet during the day I will make a list of what they had that
13 day and then make a list of what they start out with in the
14 morning. Sometimes they start before I do in the morning, like
15 at 5:00, 6:00 in the morning.

16 Q Does the Route Sheet tell them where to
17 pick up the waste and where to take it?

18 A It will tell them where to pick it up, and
19 wherever they are, they take it to the closest landfill. Say,
20 Gray Road in Cincinnati, that is where a lot of downtown stuff
21 goes. Skinner's was one that we did an awful lot of hauling to
22 in the Tri-County Mall area and out in that area, the east side
23 of Cincinnati. And there is the Joner Landfill.

24 Q So, there are a number of landfills located
25 throughout Greater Cincinnati?

1 A Right.

2 Q And your drivers go to the nearest one?

3 A That is what we first tell our drivers,
4 that and what they are allowed to haul.

5 Q When you say, "What they are allowed to
6 haul," you are saying what landfill connects up?

7 A There are situations where we have to go to
8 a sanitary landfill. We will put dumpsters out for a one-time
9 cleanup around someone's house, and it would have to go to
10 Elda.

11 Q Your truck drivers are instructed if they
12 see sanitary solid waste to go to Elda?

13 A That's correct, that's right.

14 Q When you get a call from someone to come
15 out and pick up a dumpster, do you know at that point if it is
16 solid waste?

17 A Right. On our order forms, and I can show
18 you one, when we take an order, and even if it is someone else
19 that takes an order, it explains at the bottom that there would
20 be a certain charge for extra items. It doesn't go to the
21 customer, but it costs more for those items because it would go
22 to a sanitary landfill.

23 Q So, the customer would know what kind of
24 waste it was?

25 A Exactly. We want to know what we are

1 hauling before we put it in a container.

2 Q Are your drivers trained in any way to sort
3 of confirm, for lack of a better word, whether your customers
4 got it right, whether your customers have actually identified
5 their waste correctly?

6 A What we haul is pretty much constant. The
7 drivers we've got have all been with us quite some time and
8 have worked for other companies in the business, and it is
9 pretty apparent what they are allowed to accept and not allowed
10 to accept.

11 Q Have you had occasion to reprimand any
12 drivers for taking a load to the wrong landfill?

13 A Yes, because they have been turned away at
14 times. Yes, that has happened, sure.

15 Q Does the landfill inform you then?

16 A Right, they won't accept it, you know.
17 Say, on this load someone threw a load of cardboard -- Say,
18 you're at a construction job for Messer Construction, and
19 someone else backs up a truck -- backs up to the dumpster with
20 a truck and throws their cardboard boxes in there and --
21 Obviously, they are not going to take it to a sanitary landfill
22 if, say, someone backs up to it and it gets covered up with
23 something. He may not know what is in the container other than
24 what is on the top and what is supposed to be there. Things
25 like that do happen, I am not going to sit here and say that

1 doesn't happen.

2 Q Are you aware of any agreements,
3 understandings or contracts that Whitton Trucking had with the
4 Skinner's Landfill?

5 A No, there is not, other than just the
6 verbal agreement that they were open for business, you know, at
7 a specified price, whatever it was on the bill.

8 Q And was the basic arrangement that your
9 drivers, whenever they had a load for the Skinner's Landfill,
10 could take it out to the Skinner's Landfill and dump it off?

11 A Right.

12 Q Did you get monthly billings?

13 A Yes.

14 Q And are those what you brought today?

15 A That's correct.

16 Q Were you able to locate any other bills
17 other than what you brought today?

18 A That is all. I brought in whatever had
19 their name on the top.

20 Q Are you aware of any other communications?

21 A No, none other than there might have been
22 letters at the time -- I know there was a letter explaining
23 their ceasing of operations, and that I couldn't find; and just
24 possibly a price sheet, and that is it.

25 Q Can you think of the substance of any other

1 letters that you might have seen?

2 A No, no.

3 Q During some prior depositions with some of
4 the folks that work out at the Skinner's Landfill there was a
5 discussion that I will try to explain to you as it was
6 explained to me, and I just want you to tell me whether or not
7 you are aware of any agreement like this between Whitton
8 Trucking and the Skinner's Landfill. Basically the folks out
9 at the Skinner's Landfill have informed me that they had an
10 agreement with Whitton Trucking that if any illegal or solid
11 waste, any waste that did not belong at the Skinner's Landfill,
12 arrived on site from a Whitton truck, that it was to be taken
13 out of the dump -- out of the dump area, brought over to the
14 side of the landfill, put into a roll-off box, and then Whitton
15 would come back and pick up that roll-off box and dispose of
16 it?

17 A I don't recall us ever hauling anything
18 away from there, but it is possible with other landfills. We
19 may have done that with the Gray Road Landfill, that was
20 billed, say, for another landfill. We put a dumpster there
21 collectively for -- all the haulers put it there, and it was
22 done at a competitive thing, the cheapest price. I don't
23 recall hauling anything out of Skinner's.

24 Q If you would have hauled anything out of
25 Skinner's would it have been billed to Skinner's?

1 A I am sure.

2 Q And in your records if there was a bill
3 like that you would have located it?

4 A Not that I am aware of, not for Skinner's.

5 MS. ROBERTO: Let's go off the record for a
6 little bit.

7 (Off-the-record discussion.)

8 (The document, various copies of
9 bills from Skinner's Landfill,
10 to The John J. Whitton Trucking
11 Company, consisting of eighteen
12 pages, was marked as Plaintiff's
Exhibit No. 1 for
identification, in the
deposition of
Rodney Glenn Gibbons.)

13 MS. ROBERTO: Let's go back on the record.

14 Q You mentioned that there might have been an
15 occasion where you would have had to reprimand a driver because
16 you got a call from a landfill who might have called you and
17 said that the driver brought in something that is unacceptable.
18 Could you walk me threw the process once you get a telephone
19 call on a driver what it is that you do next, how do you
20 rectify the situation if a driver has brought unacceptable fill
21 to a landfill?

22 A Obviously, I don't talk to them over the
23 radio, I just tell them when they come in, "Hey, that's not
24 where it goes." We are selling truck time, we don't want that
25 to go down the drain; we speak to our drivers on a one-on-one

1 basis and make things perfectly clear, there is no room for
2 misconception.

3 Q At the point in time that the driver sends
4 unacceptable waste to a landfill, is it at the landfill or on
5 the truck?

6 A The times it has happened have been so
7 minimal that I can't sit here and recite them.

8 Q If it had gotten out of the truck would you
9 have made sure that the driver got it back in and left with it?

10 A If someone were to call me, my response
11 would be, "Whatever they want you to do," whatever they have to
12 do, "Then do it, and then let me know what is going on."
13 Whatever would have to be done, that is what we would do.

14 Q Do you recall the Skinner's Landfill ever
15 calling and informing you that the driver had brought in
16 inappropriate fill and requesting that the driver leave?

17 A I can't say that, no, I really can't.

18 Q I believe you mentioned that the dumpsters
19 which you have are strictly at construction sites. Have you
20 located a dumpster any time in the last, say, three years
21 anyplace other than at a construction site?

22 A Yeah, I thought about that after I said
23 strictly, and I shouldn't have said strictly. Another company
24 that we have operated under is the Cincinnati Cullett Company
25 since 1965, and we buy scrap glass for the purpose of

1 recycling. There is an account that we do have for hauling to
2 the Skinner's Landfill, and we've got a dumpster for their
3 glass, a large container for scrap plate glass. Then we also
4 supply a container, a large container for plate glass that --
5 We get this scrap in tempering and cutting, they cut plate
6 glass; and when they decreate glass, we throw it over in the
7 container. That is part of the rate, we pay to provide this
8 waste service for their crates. That is the only other type of
9 thing I know of.

10 Q Now, where would the crates be disposed of?

11 A Well, the crates would be nothing but the
12 wooden crates, and we would have taken them to Skinner's
13 because it is up in that area, it is up off of 747. Now, we
14 are presently hauling that to another construction -- I mean,
15 that is all that is in it, wooden crates, untreated wood; it is
16 nothing, you know.

17 Q Now, where did the scrap glass go?

18 A We bring that down to our facility in
19 Cincinnati, and we sell that; we probably sell about 100 crates
20 a month.

21 Q Can you think of any other crates that
22 would be at another construction site?

23 A As far as Skinner's is concerned, no.

24 Q When you say, "As far as Skinner's is
25 concerned?"

1 A Anything that would be in the geographic
2 area, right, right.

3 Q Does Whitton Trucking ever haul for any
4 other companies?

5 A Do you mean other haulers?

6 Q Other haulers, such as King Wrecking or
7 King Container?

8 A We hauled some scrap from -- We do that
9 when a whole load of old lumber -- Well, there have been
10 occasions. This is the type of equipment you just don't go out
11 and rent because the truck is easy to find, but to find a truck
12 with a particular type of apparatus on it to lift these
13 containers you just don't find unless you call one of your
14 competitors. And there has been a time just here in the very
15 recent past, I would say just since the first of the year, that
16 we hauled for King now that you mentioned it, yes. But that is
17 the only time we ever hauled for King. And, actually, I think
18 that is the only time we ever hauled for any other competitor.

19 Q That was after the first of this year,
20 1991?

21 A Yeah, right.

22 Q So, that wouldn't have gone to the
23 Skinner's Landfill?

24 A No, no.

25 Q Are there any other companies that you did

1 that for?

2 A No, I can't think of any others.

3 Q We have marked the documents that you have
4 provided to us as Plaintiff's Exhibit 1, and I am going to just
5 show them to you. If you could, just describe for me what
6 these documents are?

7 A Just as I come to them one by one.

8 Q Or if you just want to flip through the
9 group of them?

10 A All of these, I know what they are; they
11 are of different dates, but each one reflects one month's bill
12 from the Skinner's Landfill from what we have hauled into the
13 Skinner's Landfill.

14 Q So, would this be a copy of the bill of the
15 Skinner's Landfill that --

16 A Right.

17 Q And they arrived on a monthly basis?

18 A Right. There is a stamp where it is marked
19 paid and the date that the check was drafted.

20 Q When you say the check number underneath of
21 the paid stamp, it looks like --

22 A Is that where she put it, underneath? Oh,
23 yeah, it says check number -- I can -- For example, the one you
24 have got in your hand, it would have been paid on 4/11 of '88
25 by Check No. 16540.

1 Q And is that the typical way that Whitton
2 Trucking acknowledged that the bill was paid in their own
3 internal record keeping?

4 A Right.

5 Q And I am assuming that these are accurate
6 copies of documents that were in your file?

7 A Right.

8 MS. ROBERTO: I don't have any other
9 questions for you right now, but Mr. Evans may.

10 CROSS-EXAMINATION

11 BY MR. EVANS:

12 Q It would be safe to say that your -- First
13 of all, you haul very little garbage; right?

14 A None that I am aware of, we make that clear
15 right at first to our drivers.

16 Q But you said that sometimes old mattresses
17 and old furniture would get into the dumpsters?

18 A Sometimes, yes. But when we know they are
19 in the dumpster, we take them to the sanitary fill.

20 Q Do the Skinners have their own dumpsters
21 out on their premises?

22 A Yes, certainly.

23 Q Have you been out to the Skinner's
24 Landfill?

25 A One time after they were closed we met with

1 someone out there about the possibility of purchasing some of
2 their containers, that is the only reason I knew that they had
3 them.

4 Q And your drivers, of course, when they were
5 in the vicinity were instructed basically to take construction
6 and demolition debris out there; right?

7 A That's right.

8 Q If something else got in the dumpster, such
9 as a construction crew throwing -- they might have thrown paper
10 bags in there which nobody would notice?

11 A I would have no idea of that, but that's
12 not our purpose.

13 Q You are a demolition service?

14 A We don't do demolition, we --

15 Q You haul waste for demolition and
16 construction of buildings?

17 A We do a lot of roofing for one thing and
18 rehab. Say, if someone knocks the plaster off their walls and
19 takes the lath off, we haul that away.

20 MR. EVANS: I believe that is all.

21 CROSS-EXAMINATION (Continued)

22 BY MS. ROBERTO:

23 Q We just got, I believe, another stack of
24 copies of documents that you brought for us today. And I want
25 to get these marked and have you identify these, as well?

1 (The document, various copies of
2 bills from Skinner's Landfill,
3 to The John Whitton Trucking
4 Company, consisting of fifteen
5 pages, was marked as Plaintiff's
Exhibit No. 2 for
identification, in the
deposition of
Rodney Glenn Gibbons.)

6 A They are just more of the same, apparently.

7 Q We have marked these documents Plaintiff's
8 Exhibit No. 2. Are these essentially the same type of
9 documents as Exhibit No. 1?

10 A More of them, just different months.

11 Q And these were all generated in the course
12 of your business?

13 A Right.

14 Q And they demonstrate bills that have been
15 paid by Whitton Trucking?

16 A Yes.

17 MR. CHALFIE: Let the record indicate that
18 I brought in part of what was requested of
19 Mr. Gibbons for the deposition as the copying was
20 completed, and Exhibit 2 is the remainder of the same
21 things that were also copied so that there wouldn't
22 be any delay in the questioning.

23 MR. EVANS: I just have one more question.

24

25

CROSS-EXAMINATION (Continued)

1
2 BY MR. EVANS:

3 Q If, in fact, some things had been brought
4 into Skinner's Landfill that didn't belong there, and they were
5 found and had been dumped, if they would have set it aside, one
6 of your drivers would have taken it back out?

7 A Oh, sure, the efforts being to stay in good
8 standing with the landfill. We need a place to dump, and,
9 obviously, we won't want to --

10 Q You wouldn't have billed them for removing
11 inappropriate waste that you hauled in?

12 A No, but if it was there on a collective
13 basis --

14 Q If they found it, you hauled it out?

15 A Well, sure, because obviously they wouldn't
16 allow us to do business there again if we didn't. I mean, that
17 just stands to reason.

18 MR. EVANS: I believe that is all.

CROSS-EXAMINATION (Continued)

19
20 BY MS. ROBERTO:

21 Q Would you have had any record of hauling
22 waste back out in such a manner that Mr. Evans just asked you?

23 A The only record there would be of something
24 like that -- No, none, since there is no one to bill.

25 MR. CHALFIE: For the record, I think he

1 has already testified that he never hauled anything
2 out of Skinner's.

3 MS. ROBERTO: I would just like to clarify
4 what might be an inconsistency between that answer
5 and what he just mentioned to Mr. Evans, because I
6 believe he just told Mr. Evans that on occasion he
7 might have hauled something out.

8 THE WITNESS: No, if requested I would
9 have.

10 Q So, does that mean that you have never been
11 requested to or --

12 A Not to my knowledge, no.

13 CROSS-EXAMINATION (Continued)

14 BY MR. EVANS:

15 Q So, as far as you know, nothing has ever
16 been hauled out of Skinner's Landfill?

17 A Not to my knowledge, no.

18 Q Would there have been a record had
19 something been hauled out?

20 A The only record there would have been, and
21 that would be tough to find, would be the invoice we received
22 from Alda Landfill because that would be where it would have
23 had to go as an alternative. And it would be, not necessarily
24 in the same format as this (indicating), but it would be a
25 monthly bill and a receipt for that, a gate receipt for that.

CROSS-EXAMINATION (Continued)

BY MS. ROBERTO:

Q But you are unaware of any practice of bringing things back out?

A I am unaware of us hauling things back out.

MS. ROBERTO: That's it.

MR. EVANS: I don't have any other questions.

MS. ROBERTO: Thank you.

THE WITNESS: OK.

RODNEY GLENN GIBBONS

(DEPOSITION CONCLUDED AT 2:45 P.M.)

C E R T I F I C A T E

STATE OF OHIO :
: SS:
COUNTY OF BUTLER :

I, Peggy J. Clark Boggs, the undersigned, a duly qualified and commissioned Notary Public within and for the State of Ohio, do hereby certify that before giving of the aforesaid deposition, the said RODNEY GLENN GIBBONS was by me first duly sworn to depose the truth, the whole truth and nothing but the truth; that the foregoing deposition was given at the said time and place and was taken in all respects pursuant to agreement and stipulations of counsel hereinbefore set forth; that the deposition was taken in stenotypy by me and transcribed into typewritten form under my supervision; that the transcribed deposition is to be submitted to the witness for his examination and signature, and that signature may be affixed out of the presence of the Notary Public; that I am neither relative, attorney, nor employee of any party or their counsel and have no interest in the result of this pending action.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal of office at Hamilton, Ohio, this _____ day of _____, 1991.

Commission Expires 9/18/91

TO THE REPORTER:

<u>PAGE</u>	<u>LINE</u>	<u>CORRECTION OR CHANGE AND REASON THEREFOR</u>
1	1	1
2	2	2
3	3	3
4	4	4
5	5	5
6	6	6
7	7	7
8	8	8
9	9	9
10	10	10
11	11	11
12	12	12
13	13	13
14	14	14
15	15	15
16	16	16
17	17	17
18	18	18
19	19	19
20	20	20
21	21	21
22	22	22
23	23	23
24	24	24
25	25	25
26	26	26
27	27	27
28	28	28
29	29	29
30	30	30
31	31	31
32	32	32
33	33	33
34	34	34
35	35	35
36	36	36
37	37	37
38	38	38
39	39	39
40	40	40
41	41	41
42	42	42
43	43	43
44	44	44
45	45	45
46	46	46
47	47	47
48	48	48
49	49	49
50	50	50
51	51	51
52	52	52
53	53	53
54	54	54
55	55	55
56	56	56
57	57	57
58	58	58
59	59	59
60	60	60
61	61	61
62	62	62
63	63	63
64	64	64
65	65	65
66	66	66
67	67	67
68	68	68
69	69	69
70	70	70
71	71	71
72	72	72
73	73	73
74	74	74
75	75	75
76	76	76
77	77	77
78	78	78
79	79	79
80	80	80
81	81	81
82	82	82
83	83	83
84	84	84
85	85	85
86	86	86
87	87	87
88	88	88
89	89	89
90	90	90
91	91	91
92	92	92
93	93	93
94	94	94
95	95	95
96	96	96
97	97	97
98	98	98
99	99	99
100	100	100

13	Lines 3-9	We also supply a container for the crates they receive their glass in when they "de crate" this glass. They deposit the crates in this container. This service is part of what we pay them for their scrap glass.
13	19	We process ^{process} approx 100 tons of this type glass per week.
13	21	CAN you think of any other company where you provide dumpster service for other than construction.
14	8+9	delete (was not said) -- We do that when a whole load of lumber.
17	17	We hauled a lot of roofing material.
19	14	If they would have found it, you would have hauled it out?
8	1.	hauling before we put out a container.

DATE 4-1-91

SIGNATURE

SIGNATURE Rodney B. Gilmore